

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

In this action, each party has filed a motion for summary judgment under Federal Rule of Civil Procedure 56. Those motions are currently set for a hearing on August 25, 2011. The Court deems these motions appropriate for resolution without oral argument, and vacates the August 25, 2011 motion hearing and case management conference. *See* Civ. L.R. 7-1(b). For the reasons set forth below, the Court DENIES both parties' motions for summary judgment.

Plaintiff filed suit on August 17, 2010 under the Employment Retirement Income Security Act of 1974, 29 U.S.C. §1001 *et seq.* (“ERISA”). *See* Compl. Plaintiff became an employee of the Hewlett-Packard Company in August 1982, and is a beneficiary of Defendant, the Hewlett-Packard Company Disability Plan. *Id.* at ¶¶ 7-8. Beginning in or around 1996, Plaintiff began to suffer pain in her forearms, and was eventually diagnosed with chronic repetitive stress injury in her wrist and fingers. Plaintiff submitted a worker’s compensation claim that resolved on July 24, 2001 when Plaintiff and Hewlett-Packard (“HP”) stipulated that Plaintiff had a permanent disability of

52% as of October 8, 1991 based on injuries to Plaintiff's hands, wrists, and cervical spine. *See* Administrative Record ("AR") at 300. After 2001, Plaintiff continued to work at HP with limitations regarding lifting more than three pounds and sitting or driving more than two hours. AR 301. Plaintiff alleges that she became fully disabled on or about May 1, 2005, with injuries to her hands, wrist, and cervical spine due to long hours sitting and working on a keyboard, combined with stress, depression, and anxiety from the outsourcing of her job. Compl. at ¶¶ 10-12. Plaintiff received short-term disability benefits from May 1, 2005 through October 30, 2005. *Id.* at ¶ 13.

Plaintiff's claim for long-term disability benefits under the Plan was approved on December 23, 2005. *Id.* From December 23, 2005 through August 15, 2009, Sedgwick CMS ("Sedgwick"), the Plan's claims administrator, periodically reviewed and approved Plaintiff's claim for long-term disability benefits. *Id.* at ¶ 14. Plaintiff initially returned to work on August 1, 2005 with various accommodations designed to limit extensive use of her hands and wrists, including speech recognition software, limited requirement to produce written reports, and telecommuting. AR 592. However, Plaintiff's return to work did not last long, apparently due to extreme anxiety and depression. On November 28, 2005, Plaintiff underwent an independent psychiatric examination ("IPE") with Dr. Thomas J. Becker, and in August 2006, had a second IPE with Dr. Saad A. Shakir. Based on both doctors' finding that Plaintiff was unable to perform her customary work, Defendant approved Plaintiff's claim for long-term benefits.

On January 3, 2007, Defendant informed Plaintiff that her initial 24-month period of disability would end on May 1, 2007, as benefits for disability caused by a nervous or mental disorder had a strict two-year limit. AR 363-363. However, Defendant also allowed Plaintiff an opportunity to provide any additional diagnoses that contributed to her disability. Plaintiff responded with: (1) an explanation of her upper extremity injuries and limitations as noted in her worker's compensation stipulation of a 52% permanent disability; and (2) an additional evaluation by her chiropractor Dr. Thomas Antone that Plaintiff was unable to work. AR 305-308. In addition, Plaintiff provided Defendant with the results of her August 14, 2007 MRI, which found that Plaintiff had "[s]ignificant degenerative disease most severe in C4-C5 with significant neural foraminal stenosis from the degenerative osteophytes" and that were "also degenerative disc

1 disease at C5-C6 and C6-C7.” AR 157. Again, Defendant extended Plaintiff’s long-term disability
2 benefits.

3 The same pattern continued through 2008 to mid-2009. In February and April 2008,
4 Sedgwick reviewed Plaintiff’s medical records, including new evaluations from Plaintiff’s
5 chiropractors, and extended Plaintiff’s long-term disability benefits. In February and August of
6 2008, Plaintiff’s then-current chiropractor, Lynn Peterson, D.C., provided Sedgwick with reports
7 diagnosing Plaintiff with degenerative disc disease, chronic tendonitis in her elbow and wrists, and
8 significant spurring in her spine. AR. 217. On September 5, 2008, Sedgwick extended Plaintiff’s
9 long-term disability benefits through March 2009, but also informed Plaintiff that “if there is no
10 marked improvement,” it would recommend that Plaintiff undergo an independent medical
11 examination (“IME”) by a neurosurgeon. AR 20.

12 In April 2009, a representative of the Plan sent Plaintiff’s medical records for review by a
13 Registered Nurse (“RN”). The RN review concluded that “the medical information does not
14 substantiate disability at this time.” AR 22. On May 11, 2009, after being advised by Defendant
15 that her medical records were insufficient to substantiate a permanent disability, Plaintiff was
16 evaluated by Dr. L. Neena Madireddi. Upon a review of Plaintiff’s medical records and a physical
17 examination, Dr. Madireddi concluded:

18 Given her multiple medical problems, Ms. Hinz clearly cannot use her upper
19 extremities for any type of sedentary work due to her multiple upper extremity
20 disabilities. In addition, she cannot perform a light, medium, or heavy work job
21 since she cannot be upon her feet due to her lower extremity condition. It is my
22 medical opinion that she is permanently disabled from gainful employment at this
23 time and she should be considered permanently disabled and be eligible for long
24 term disability benefits.

25 AR 132. On June 16, 2009, Plaintiff provided a new report from an April 15, 2009 appointment
26 with her chiropractor, Anne M. Stephanson, D.C. The report noted Plaintiff’s complaints of pain in
27 her spine and neck, and assessed Plaintiff with degeneration of cervical disc. AR 114-115.
28 Sedgwick extended Plaintiff’s long-term disability benefits to August 1, 2009, but still continued
its review of Plaintiff’s medical documentation of disability. AR 15.

By a letter dated August 20, 2009, Sedgwick advised Plaintiff that her claim for long-term
disability benefits was denied as of August 16, 2009. Sedgwick concluded that Plaintiff was not

1 “totally disabled” under the terms of the Plan because Plaintiff’s medical documents failed to
2 validate her inability to engage in full-time regular work. AR 86-90. Defendant based this denial
3 on the report of Dr. Robert Y. Pick, a member of Elite Physicians LTD. After reviewing Plaintiff’s
4 administrative file, but *not* examining Plaintiff herself, Dr. Pick concluded in a four-page report
5 that Plaintiff’s “multiple diagnoses are not supported by objective medical information.” AR 96-
6 100. The August 20, 2009 letter also notified Plaintiff that if she did not receive notice of
7 Sedgwick’s decision by the end of the 90-day period, “the appeal can be considered denied.”

8 Plaintiff appealed the denial on January 20, 2010. In that appeal, Plaintiff submitted
9 additional medical information and documents in support of her claim. Specifically, Plaintiff
10 submitted: (1) an October 12, 2009 note from Rachel Abrams, M.D., in which Dr. Abrams opined
11 Plaintiff was completely disabled, assessing Plaintiff with severe lateral epicondylitis, severe
12 osteoarthritis and spurring, and bulging discs in her spine (AR 51-54); and (2) a report of clinical
13 findings from Plaintiff’s chiropractor, John Amaral, D.C., showing several areas of spinal tension
14 and significant restrictions on the cervical spine range of motion. AR 55-60.

15 Sedgwick acknowledged receipt of the appeal in a letter dated to Plaintiff on February 9,
16 2010. AR 50. However, Sedgwick did not respond to Plaintiff’s appeal. Plaintiff filed suit on
17 August 10, 2010.

18 II. LEGAL STANDARDS

19 A. Summary Judgment

20 Rule 56 of the Federal Rules of Civil Procedure provides that summary judgment as to “all
21 or any part” of a claim “shall be rendered forthwith if the pleadings, depositions, answers to
22 interrogatories, and admissions on file, together with the affidavits, if any, show that there is no
23 genuine issue as to any material fact and that the moving party is entitled to judgment as a matter
24 of law.” *See* Fed. R. Civ. P. 56(b), (c). Material facts are those that may affect the outcome of the
25 case. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material
26 fact is “genuine” if the evidence is such that “a reasonable jury could return a verdict for the
27 nonmoving party.” *See id.* “[A]ll justifiable inferences must be drawn in [the nonmovant’s]
28

1 favor.” See *United Steelworkers of Am. v. Phelps Dodge Corp.*, 865 F.2d 1539, 1542 (9th Cir.
2 1989) (en banc) (citing *Liberty Lobby*, 477 U.S. at 255).

3 The moving party bears the initial responsibility for informing the district court of the basis
4 for its motion and identifying those portions of the pleadings, depositions, interrogatory answers,
5 admissions and affidavits, if any, that it contends demonstrate the absence of a genuine issue of
6 material fact. See *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). A party opposing a properly
7 supported motion for summary judgment “may not rest upon the mere allegations or denials of
8 [that] party’s pleading, but . . . must set forth specific facts showing that there is a genuine issue for
9 trial.” See Fed. R. Civ. P. 56(e); see also *Liberty Lobby*, 477 U.S. at 250. The opposing party need
10 not show the issue will be resolved conclusively in its favor. See *Liberty Lobby*, 477 U.S. at 248-
11 49. All that is necessary is submission of sufficient evidence to create a material factual dispute,
12 thereby requiring a jury or judge to resolve the parties’ differing versions at trial. See *id.*

13 **B. Standard of Review under ERISA**

14 The default standard of review applicable to a plan administrator’s decision to deny benefits
15 is de novo. See *Firestone Tire and Rubber Co. v. Bruch*, 489 U.S. 101, 115 (1989); see also *Abatie*
16 *v. Alta Health & Life Ins. Co.*, 458 F.3d 955, 963 (9th Cir. 2006) (en banc). However, if the plan
17 unambiguously gives the plan administrator discretion to determine a plan participant’s eligibility
18 for benefits, then the standard of review shifts to abuse of discretion. *Abatie*, 458 F.3d at 963.
19 Here, there is no dispute that the Plan confers discretionary authority to “determine eligibility for
20 Plan participation and entitlement to Plan benefits in accordance with the terms of the Plan.”

21 The Ninth Circuit in *Abatie*, however, also held that “procedural irregularities” should be
22 taken into consideration when deciding upon the standard of review, and that the benefits denial
23 “should be reviewed de novo if ‘an administrator engages in wholesale and flagrant violations of
24 the procedural requirements of ERISA, and thus acts in utter disregard of the underlying purpose of
25 the plan as well.’” See *Abatie*, 458 F.3d at 971. The court cautioned, however, that such de novo
26 review is only appropriate in a “rare class of cases,” and “a procedural irregularity in processing an
27 ERISA claim does not usually justify de novo review.” *Id.* at 972. Finally, the *Abatie* court noted
28 that, even if the review is for abuse of discretion, “[a] procedural irregularity, like a conflict of

1 interest, is a matter to be weighed in deciding whether an administrator's decision was an abuse of
2 discretion." *Id.*

3 Since the Ninth Circuit's en banc decision in *Abatie*, the Supreme Court has refined the
4 standard of review analysis in ERISA cases clarifying that "the conflict of interest must be
5 'weighed as a factor' but does not convert abuse of discretion review into de novo review. The
6 weight given the factor varies." *See Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 112-14 (2008);
7 *see also Conkright v. Frommert*, 130 S. Ct. 1640, 1646 (2010) (confirming that, under *Glenn*,
8 "when the terms of a plan grant discretionary authority to the plan administrator, a deferential
9 standard of review remains appropriate even in the face of a conflict"). In response to the Supreme
10 Court's opinion in *Glenn*, the Ninth Circuit has recently issued its own clarification. *See Salomaa*
11 *v. Honda Long Term Disability Plan*, 2011 U.S. App. LEXIS 4386 (9th Cir. Mar. 7, 2011). In
12 *Salomaa*, the Ninth Circuit explained the meaning of "abuse of discretion" as whether the court is
13 "left with a definite and firm conviction that a mistake has been committed." *Id.* at *24-25. In
14 addition, the Ninth Circuit stated that "deference to the plan administrator's judgment does not
15 mean that the plan prevails." *Id.*

16 III. DISCUSSION

17 In *Salomaa*, the Ninth Circuit reversed the district court's decision in favor of the
18 administrator after a trial on the administrative record and ruled that an "administrator abuses their
19 discretion if their decision was '(1) illogical, (2) implausible, or (3) without support in inferences
20 that may be drawn from the facts in the record,' and a 'higher degree of skepticism is appropriate
21 where the administrator has a conflict of interest.'" *Salomaa*, 642 F.3d at 676. Faced with cross-
22 motions for summary judgment, the standard the Court applies here is whether there is evidence in
23 the administrative record from which a reasonable fact finder could be left with a definite and firm
24 conviction that Defendant committed a mistake in denying Plaintiff's claim for benefits. As the
25 Court held in its March 20, 2011 Order, "The Court will review Plaintiff's claim under an abuse of
26 discretion standard. Because of Defendant's actions and the serious procedural irregularity
27 involved, however, the Court will review Defendant's decision to terminate Plaintiff's long-term
28 disability benefits with a greater degree of skepticism and will consider additional evidence

1 Plaintiff submitted to Defendant in connection with her notice of appeal.” *See* March 20, 2011
2 Order at 7.

3 The Ninth Circuit’s decision in *Salomaa* provides guidance on the factors district courts
4 may consider when weighing abuse of discretion:

5 In this case, the plan abused its discretion. Its decision was illogical, implausible,
6 and without support in inferences that could reasonably be drawn from facts in the
7 record, because: (1) every doctor who personally examined Salomaa concluded that
8 he was disabled; (2) the plan administrator demanded objective tests to establish the
9 existence of a condition for which there are no objective tests; (3) the administrator
10 failed to consider the Social Security disability award; (4) the reasons for denial
11 shifted as they were refuted, were largely unsupported by the medical file, and only
12 the denial stayed constant; and (5) the plan administrator failed to engage in the
13 required “meaningful dialogue” with Salomaa.

14 642 F.3d at 676.

15 In the instant case, a reasonable fact finder could be left with a definite and firm conviction
16 that a mistake was made. A fact finder could reasonably conclude that Defendant’s decision was
17 illogical, implausible and without support in inferences that could reasonably be drawn from facts
18 in the record, for at least four reasons. First, Defendant’s conclusion that Plaintiff’s multiple
19 diagnoses were not supported by “objective medical information” is refuted by substantial evidence
20 in the record. Objective medical information includes Plaintiff and HP’s July 24, 2001 stipulation
21 resolving Plaintiff’s worker’s compensation claim. That stipulation acknowledges Plaintiff’s
22 permanent disability of 52% as of October 8, 1991 based on injuries to Plaintiff’s hands, wrists,
23 and cervical spine. AR 300. Objective medical information also includes the results of Plaintiff’s
24 August 14, 2007 MRI, which found that Plaintiff had “[s]ignificant degenerative disease most
25 severe in C4-C5 with significant neural foraminal stenosis from the degenerative osteophytes” and
26 that were “also degenerative disc disease at C5-C-6 and C6-C-7.” AR 157.

27 Second, Defendant’s conclusion that Plaintiff is able to engage in full-time sedentary work
28 activities without restrictions or limitations is not supported by the record. As Defendant is well
aware, since 2001, Plaintiff worked at HP with significant limitations regarding lifting more than
three pounds and sitting/driving for more than two hours. Moreover, when Plaintiff returned to
work on August 1, 2005, she only did so with various accommodations designed to limit extensive

1 use of her hands and wrists, including speech recognition software, limited requirement to produce
2 written reports, and telecommuting. AR 592.

3 Third, Defendant did not conduct an in-person examination of Plaintiff, although Defendant
4 repeatedly notified Plaintiff that Defendant would do so in order to evaluate Plaintiff's medical
5 condition. For example, as late as September 5, 2008, Sedgwick extended Plaintiff's long-term
6 disability benefits through March 2009, but also informed Plaintiff that "if there is no marked
7 improvement," it would recommend that Plaintiff undergo an independent medical examination
8 ("IME") by a neurosurgeon. AR 20. On May 11, 2009, Plaintiff's examining doctor, Dr.
9 Madireddi, concluded that, in her "medical opinion," Plaintiff is "permanently disabled from
10 gainful employment at this time and she should be considered permanently disabled and be eligible
11 for long term disability benefits." AR 132. Despite Defendant's prior representations about the
12 use of an IME and despite Dr. Madireddi's medical opinion, Defendant did not evaluate Plaintiff's
13 medical condition by use of an IME prior to denying her request for long term disability benefits.

14 And fourth, the record contains extensive medical documentation from multiple medical
15 professionals, including medical doctors and chiropractors, that Plaintiff suffers significant cervical
16 spine and upper extremity limitations, with numerous examining doctors opining that Plaintiff is
17 totally disabled. Simply put, every doctor that examined Plaintiff found that she had significant
18 cervical and upper extremity limitations, and no examining doctor concluded that she was not
19 disabled. It is especially disconcerting that, after four years of examining doctors and chiropractors
20 coming to the conclusion that Plaintiff was disabled, Defendant changed course and relied on an
21 external records-review. *See Landree v. Prudential Ins. Co. of Am.*, No. 10-CV-05353-RBL, 2011
22 U.S. Dist. LEXIS 86800, *31 (W.D. Wash. Aug. 4, 2011) ("The Court has yet to hear an
23 explanation for the external paper review that makes any sense. There is at least a genuine
24 question of fact as to whether Dr. Syrjamaki was an objective reviewer or a heavy hitter brought in
25 by Prudential to give the Company the answer it wanted to hear.").

26 In light of the heightened skepticism due to the procedural irregularities involved in
27 Defendant's denial of Plaintiff's benefits and the conclusion that a reasonable fact finder could be
28 left with a definite and firm conviction that a mistake was made, the Court must deny both parties'

1 motions for summary judgment.¹ Instead, the Court will hold a bench trial pursuant to Federal
 2 Rule of Civil Procedure 52 based on the administrative record, the additional evidence submitted
 3 on Plaintiff's appeal not considered by Defendant, the parties' trial briefs, and argument from
 4 counsel. A bench trial will ensure a full inquiry into the entire record, including evidence
 5 submitted on Plaintiff's appeal but not considered by Defendant, without running afoul of the
 6 traditional summary judgment rules that evidence outside of the administrative record should be
 7 viewed in the light most favorable to the non-moving party. *See Nolan v. Heald College*, 551 F.3d
 8 1148, 1150 (9th Cir. 2009) (reversing grant of summary judgment where "without evidentiary
 9 hearing or bench trial, the district court considered and rejected Nolan's bias argument by weighing
 10 the documentary evidence of bias, and ignoring the protections that summary judgment usually
 11 affords the non-moving party. Though the district court would have been permitted to weigh such
 12 evidence after bench trial, weighing that evidence on summary judgment was improper in this case
 13 where the evidence was outside of the administrative record.").

14 IV. CONCLUSION

15 For the reasons stated above, both parties' motions for summary judgment are DENIED.
 16 The August 25, 2011 motion hearing and case management conference are VACATED. As
 17 previously set, the Court will hold a bench trial pursuant to Federal Rule of Civil Procedure 52 on
 18 Tuesday, November 8, 2011 at 1:30 p.m. The Court sets the following revised briefing schedule:
 19 opening briefs are due by Friday, September 23, 2011, opposition briefs are due by Friday, October
 20 7, 2011, and reply briefs are due by Friday, October 14, 2011. The Court will hold a pretrial
 21 conference on Wednesday, October 26, 2011 at 2:00 p.m. The parties should familiarize
 22
 23

24 ¹ Although Plaintiff filed her own motion for summary judgment, in her briefing, Plaintiff
 25 essentially concedes that this case should proceed to a bench trial. *See* Pl.'s Reply I/S/O Pl.'s Mot.
 26 for Summary Judgment at 3 ("In communicating with counsel for Defendant during the case
 27 management process, Plaintiff's position was that this case should be adjudicated in a bench trial,
 28 and is not appropriate for resolution by summary judgment. However, having learned that
 Defendant would be filing their Motion for Summary Judgment, Plaintiff felt compelled to file her
 Motion."). In light of the finding above that a reasonable fact finder could be left with a definite
 and firm conviction that a mistake was made, the Court agrees with Plaintiff that this case should
 proceed to a bench trial.

1 themselves with the undersigned's Bench Trial Standing Order available on the Court's website.

2 **IT IS SO ORDERED.**

3
4 Dated: August 23, 2011



LUCY H. KOH
United States District Judge